

INSTRUMENT # 2010021268



2010021268

Prepared by and return to: Sellers, Hinshaw, Ayers, Dortch & Lyons, P.A. (Box 91) *CEL*

**STATE OF NORTH CAROLINA**  
**COUNTY OF MECKLENBURG**

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR OXFORD GLEN**

This **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OXFORD GLEN** ("Declaration") is made as of the 31 day of January, 2010, by **OXFORD GLEN NEIGHBORHOOD ASSOCIATION, INC.** a North Carolina non-profit corporation ("Association"), pursuant to the authority granted in Section 13 of the Declaration of Restrictions for Oxford Glen, which is recorded in Book 5229 at Page 316 of the Mecklenburg County Public Registry, as amended by the Amendment to Restrictions recorded in Book 5315 at Page 576 of the Mecklenburg County Public Registry (herein collectively referred to as the "Original Declaration").

**STATEMENT OF DECLARATION**

The Lots shall be held, transferred, sold, conveyed, occupied and used subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots and be binding on, and inure to the benefit of, all parties having any right, title or interest in the Lots or any part thereof, and the heirs, successors and assigns of all of the foregoing parties. Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, shall be applicable to the Association.

**ARTICLE I**

**DEFINITIONS**

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

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**Section 1.1** “Architectural Review Committee” shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Property and to perform certain other functions as described in **Article IX** of this Declaration.

**Section 1.2** “Association” shall mean and refer to **Oxford Glen Neighborhood Association, Inc.**, a North Carolina non-profit corporation, organized pursuant to N.C.G.S. § 55A-2-02, and its successors and assigns.

**Section 1.3** “Board” shall mean and refer to the Board of Directors of the Association.

**Section 1.4** “Bylaws” shall mean the bylaws adopted by the Association pursuant to the North Carolina Non-Profit Corporation Act, as they may be amended from time to time.

**Section 1.5** “Common Area” shall mean and refer to all real and personal property leased or owned by the Association, and all easements granted to or reserved for the benefit of the Association, and all facilities or improvements thereon. “Common Area” shall constitute “Common Elements” as defined in NCGS § 47F-1-103 (4).

**Section 1.6** “Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Oxford Glen, as it may be amended, supplemented or extended from time to time.

**Section 1.7** “Governing Documents” shall mean this Declaration, the Bylaws and the Articles of Incorporation of the Association.

**Section 1.8** “Lot” shall mean and refer to any numbered plot of land, with the exception of the Common Area, appearing on any Plat of the Property.

**Section 1.9** “Member” shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association as provided in **Article IV, Section 4.1**.

**Section 1.10** “Occupant” shall mean and refer to any person occupying all or any portion of a Lot or any portion of the Property for any period of time.

**Section 1.11** “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Property, but excluding those parties who have such interest merely as security for the performance of an obligation.

**Section 1.12** “Plat” shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the office of the Register of Deeds for Mecklenburg County, North Carolina.

**Section 1.13** "Property" shall mean and refer to the real property which is subjected to this Declaration and set forth on that map recorded in Map 21 at Page 354 of the Mecklenburg County Public Registry.

**Section 1.14** "Register of Deeds" shall mean the Register of Deeds Office for Mecklenburg County, North Carolina.

## ARTICLE II

### COMMON AREA

**Section 2.1 Maintenance.** The Common Areas, together with all improvements, utilities and amenities located thereon and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association. Such maintenance shall include repair and reconstruction, when necessary.

Maintenance by the Association shall include, without limitation, the following:

(a) Care and maintenance of the easements specified in **Article IX** ( but only to the extent the Association uses or exercise its rights in or over any of them) including, without limitation, installation, maintenance, repair, replacement and reconstruction, when necessary, of the trees, shrubs, flowers, vegetation, monuments, signage, irrigation, planters and lighting located thereon and providing and paying for utility or lease charges for irrigation and lighting located thereon.

(b) Maintenance of the Common Area shall include the maintenance, repair, replacement, and reconstruction, when necessary, of the Common Area, including all lighting, water lines and other fixtures, wire, railings and other facilities located thereon, and providing and paying for utility charges and other operational costs.

(c) Keeping of all areas and facilities for which the Association is responsible hereunder clean and free from debris and in a safe and orderly condition, together with the landscaping thereon, if any; provided, however, that wetlands, ponds and other Common Area not yet improved may remain in its natural, unimproved state, it being the intent of this Declaration that the Association have no specific obligation with respect to the maintenance or improvement of the unimproved Common Area as except as may be otherwise imposed or provided by law.

**The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof, including, without limitation, any House or underground utilities located thereon. The Owners of such Lots shall be solely responsible for same.**

**Section 2.2 Reserve Fund(s).** The Association may establish and maintain reserve fund(s) for the periodic maintenance, repair and replacement of all or any portion of the Common Areas or any easement maintained by the Association and/or in order to fund unanticipated expenses of the Association and/or to acquire equipment or services as may from time to time be deemed reasonable, necessary or

desirable by the Board of Directors. Such reserve fund(s) shall be collected and maintained out of the assessments, as hereinafter provided in **Article IV**. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

**Section 2.3 Conveyance or Encumbrance of Common Area**. Title to the Common Area shall be in the name of the Association. Notwithstanding any provisions of the Governing Documents, all Common Area shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public with the exception of roadways on the Property that may have been accepted for public dedication by the North Carolina Department of Transportation or other governmental entity. While the Property remains subject to this Declaration, no conveyances shall be made of any portion of the Common Area nor shall any security interest or lien of any nature arise or be created against the Common Area except as permitted under NCGS § 47F-3-112. This section shall not apply to a grant or transfer of an easement right-of-way. Any grant of a mortgage or security interest in the Common Area shall expressly be subject to the covenants, provisions, rights, and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to the Common Area, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration. Conveyance of open space within Common Area shall also be subject to restrictions and limitations imposed by Mecklenburg County.

### ARTICLE III

#### THE ASSOCIATION

**Section 3.1 Automatic Membership**. All Owners shall automatically be Members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Declaration, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

**Section 3.2 Voting**. The Owner (or group of Owners) of each Lot shall be entitled to one (1) vote in the Association. If a Lot is owned by more than one person or entity as tenants in common or tenants by the entirety, then each such person or entity shall be deemed an Owner and a Member of the Association, but in no event shall more than one (1) vote in the Association be cast with respect to each Lot, as is more particularly set forth in the Bylaws.

**Section 3.3 Association to Maintain Books and Records**. The Association shall maintain at all times current copies of all Governing Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements as required by the North Carolina Non-Profit Corporations Act. Inspection and production of documents, books and records shall be governed by Article 16 of the North Carolina Non-Profit Corporations Act.

**Section 3.4 Management and Other Agreements.** The Association may be professionally managed and may enter into management and other agreements for the management, operation and administration of the Property, with the individual, firm or entity that the Association deems appropriate and in the best interest of the Property from time to time. A copy of all such agreements shall be made available to each Owner upon request. Any management or other agreement for the ongoing provision of goods or services entered into by the Association shall provide that it may be canceled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. Should the Association enter into a management agreement for the Property as permitted herein, the manager shall obtain and, at all times, maintain Fidelity Insurance as provided in **Section 6.1(c)** of this Declaration.

**Section 3.5 Liability Limitations.** Neither any Member, nor the Board, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither the Association, nor its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Association shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

**Section 3.6 Association to Maintain Books and Records.** The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements as required by N.C.G.S. § 47F-3-118(a) and the North Carolina Non-Profit Corporations Act. Inspection and production of documents, books and records shall be governed by Article 16 of the North Carolina Non-Profit Corporations Act.

## ARTICLE IV

### OPERATION OF THE PROPERTY AND ASSESSMENTS

**Section 4.1 Adoption of Budget; Creation of Lien and Personal Obligation for Assessments.** The Board shall, from time to time and at least annually, prepare and adopt a proposed budget for Association, determine the amount of expenditures payable by the Owners to meet the proposed budget ("Common Expenses") and allocate and assess Common Expenses among the Owners as provided in **Section 4.6**. The Common Expenses shall include such amounts as the Board deems necessary for the operation and maintenance of the Property and shall include, without limitation, amounts for purposes set forth in **Section 4.2**, amounts for permitted reserves and such amounts as may be necessary to make up any deficit for outstanding Common Expenses for any previous year. No proposed budget shall be effective until ratified as provided in NCGS § 47F-3-104 ( c ).

Each Owner of any Lot or portion of the Property, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges of the Association, (2) Supplemental Annual Assessments, (3) Special Assessments, and (4) Special Individual Assessments, such assessments to be established and collected as hereinafter provided. Each assessment, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

**Section 4.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property to the fullest extent authority or responsibility is granted to the Association hereunder including, and without limiting the generality of the foregoing, for: the leasing, acquisition, improvement, maintenance and operation of the Property including, without limitation, that specified in **Section 2.3**; provision of services and facilities for the benefit of Members and related to the use and enjoyment of the Property, including but not limited to maintenance, landscaping and security services for the Common Area including but not limited to the front entrance grounds; payment of taxes and governmental assessments on the Common Area; payment of insurance premiums for any insurance policies maintained by the Association; payment in connection with utilities serving the Property; necessary office supplies; an annual neighborhood social; payment of management fees to a property manager in accordance with **Section 3.4**; the employment of attorneys, architects, accountants and other professionals to represent or assist the Association deemed necessary or appropriate by the Board; the cost of utilities and fuel used in operating facilities in the Common Area; for reserves as permitted in **Section 2.4** and to carry out all other purposes and duties of the Association, the Board or the Architectural Review Committee as provided in the Governing Documents.

**Section 4.3 Payment of Annual Assessments; Due Dates and Maximums.** Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

(a) The Annual Assessment amount for each and every year shall be in an amount as set by the Board of Directors, in accordance with the terms of this **Article IV**. Annual Assessments shall be due and payable in advance in full or in installments as determined by the Board. The Board shall fix the amount of the Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount of and due date of each installment of such Annual Assessment to each Owner at least thirty (30) days prior to the due date for payment of the assessment or first installment thereof; provided, however, the failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of the obligation to pay Annual Assessments.

(b) The maximum Annual Assessment for calendar year 2009 shall be Fifty and 00/100 (\$50.00) Dollars per Lot. For calendar year 2010 and thereafter, the Board, without a vote of the Members, may increase the Annual Assessment applicable to each Lot by the greater of ten percent (10%) or the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the

CPI published by the United States Government indicating changes in the cost of living shall be used. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board and without a vote of or further approval from the Members.

(c) For calendar year 2009 and thereafter, the maximum Annual Assessment applicable to each Lot may be increased above the maximum amount set forth in subparagraph (b) of this **Section 4.3** by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

(d) The Board may fix the Annual Assessment applicable to each Lot at an amount not in excess of the maximum set forth in Subparagraph (b) or (c) of this **Section 4.3** (the "Maximum Annual Assessment"). If the Board shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a "Supplemental Annual Assessment." In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year unless approved as specified in Subparagraph ( c ).

(e) With respect to any Lot conveyed by any Owner, the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

**Section 4.4 Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy special assessments ("Special Assessment") for the purpose of defraying, in whole or in part, the cost of (i) the installation or construction of any Common Area or easement improvements or (ii) the reconstruction, repair or replacement of the Common Areas and/or any easement maintained by the Association, including any improvements located thereon. Provided, however, that any Special Assessment must be approved by a vote of sixty-seven percent (67%) of the votes appurtenant to the Lots which are then subject to this Declaration.

**Section 4.5 Special Individual Assessments.** In addition to the Annual Assessments and Special Assessments authorized above, the Board shall have the power to levy special assessments applicable to any particular Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or any easement maintained by the Association, including any improvements located thereon, occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration or the Governing Documents. The due date of any Special Individual Assessment levied shall be fixed in the Board resolution levying such Special Individual Assessment.

**Section 4.6 Uniform Rate of Assessment.** Annual Assessments, Supplemental Annual Assessments and Special Assessments levied by the Association must be fixed at a uniform rate for each Lot.

**Section 4.7 Effect of Nonpayment of Assessments: Remedies of the Association.** If any assessment, or installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option and without further notice, declare the entire unpaid assessments immediately due and payable. Unpaid assessments shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, the Association may impose a monthly charge for late payment, which charge (i) may be imposed once in any month when any portion of the balance due and owing by the Owner to the Association is overdue or delinquent (whether for past assessments, late payment charges, interest, or other amounts), and (ii) which shall be equal to ten dollars (\$10.00). Late charges shall be due and payable in full on the date they are imposed. The Association shall be entitled to recover fees and penalties for returned checks as permitted in N.C.G.S. § 6-21.3 and N.C.G.S. § 25-3-506. Finally, the Association may impose and collect a one-time administrative collection service fee of up to Seventy-Five and no/100 Dollars (\$75.00) whenever an account becomes delinquent or past due which shall be in addition to interest, late charges, and attorney's fees.

The Association may enforce assessment obligations as permitted by law, including, without limitation, by filing and foreclosing a claim of lien in accordance with the procedures set forth in N.C.G.S. §47F-3-116, and/or by bringing an action at law against the Owner personally obligated to pay the assessment and/or foreclose the lien against his Lot to collect said assessment. Interest, late charges and reasonable attorneys' fees and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Foreclosure may be accomplished in the manner that a foreclosure of a mortgage or deed of trust would be brought under Chapter 45 of the North Carolina General Statutes, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. Lots acquired at a foreclosure sale shall not be Common Area. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

During any period in which an Owner is in default in the payment of any assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Area or any other services or facilities provided by the Association (except the right of access to the Owner's Lot) shall be automatically suspended and shall remain suspended until the assessment, together with interest, late charges, administrative collection fees, and attorney's fees are paid in full. This automatic suspension of rights and privileges in lieu of notice and hearing as provided in N.C.G.S. § 47F-3-102(11) and N.C.G.S. § 47F-3-107.1. During any period in which an Owner is in default in the payment of any installment of any assessment levied by the Association, the Board may also notify the owner and holder of any mortgage or deed of trust of a delinquency relating to the Lot encumbered by that mortgage or deed of trust.



**Section 4.8 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the foreclosure of any Mortgage shall extinguish the lien of such assessments as to payments which became due prior to the time the foreclosure sale is final at which time the high bidder and new Owner shall become responsible for payment of all assessments coming due thereafter. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Mortgage, his heirs, successors and assigns. No foreclosure sale or transfer shall relieve such Lot from liability for assessments thereafter becoming due or from the lien thereof.

**Section 4.9 Exempt Property.** The following parts of the Property shall be exempt from assessment by the Association: (a) the Common Area; and (b) any part of the Property dedicated to and accepted by any public or governmental authority. The recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any such authority.

**Section 4.10 Voluntary Conveyance; Estoppels.** Except as provided in **Section 4.8**, the lien for assessments of the Association created in this **Article IV** shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in **Section 4.7**. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

## ARTICLE V

### UTILITIES

**Section 5.1 Utilities.** All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Electric, gas or other meters of any type, or other apparatus serving each Lot or Improvements thereon, shall be located at the rear of the House or buildings constructed on Lots or, if approved by the Architectural Review Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Review Committee in accordance with the provisions of this Declaration. This section shall not apply to utilities or utility components placed or installed prior to the recordation of this Declaration.

**Section 5.2 Leased Lighting.** The Association may install or contract with persons or entities to install lighting within the Property and may enter into a lease agreement(s) with those persons or entities or others for the ongoing operation and maintenance of some or all of that lighting.

## ARTICLE VI

### INSURANCE AND RECONSTRUCTION

**Section 6.1 Association Insurance.** The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) **Property and Casualty Insurance.** The Association shall obtain and maintain at all times a policy or policies of property insurance covering all Common Areas and all improvements located in the Common Area, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of land, excavation, paving, foundations and other normally excluded items. Notwithstanding the foregoing, said insurance may provide for coinsurance by the Association of not greater than twenty (20%) percent and/or may include a commercially reasonable deductible not in excess of \$10,000.00; provided, however, in no event shall coverage obtained and maintained by the Association be less than that required under N.C.G.S. § 47F-3-113(a)(1). The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement and (if reasonably available) shall contain the following provisions:

- (1) standard "Replacement Cost" and "Inflation Guard" endorsements;
- (2) construction code endorsements providing for coverage if the Common Area becomes subject to a construction code provisions which would require changes to undamaged portions of any structure thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (3) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners or members of the Owner's household;
- (4) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control;
- (5) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner; and
- (6) any provisions required under N.C.G.S. § 47F-3-113(d).

(b) Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the operation, use, ownership, maintenance, or repair of the Common Area. Policies obtained shall contain the provisions specified in N.C.G.S. § 47F-3-113(d). The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all additional insureds. The Board shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. The Association's manager shall also acquire and maintain fidelity insurance as required herein and under **Section 3.4**. Any such fidelity insurance policy must name the Association as the named insured and shall be written in and maintained in amounts deemed reasonable and appropriate by the Board from time to time, acting in its sole discretion.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, flood insurance, performance bonds, payment on labor and material bonds and maintenance bonds.

(e) Insurance Unavailable. In the event the insurance described in Subsections (a), (b), or (c) is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States first class mail to all Owners. In the event the Association determines any such insurance to be "not reasonably available," it shall take reasonable steps to obtain insurance for the benefit of the Association and the Owners which is as closely equivalent to the insurance coverage required in Subsections (a) through (c) that is reasonably available. Without limiting the generality of the foregoing, and by way of example only, insurance will be deemed "not reasonably available" if the cost of that insurance is prohibitive in light of the Association's budget and available resources.

**Section 6.2 Premiums.** Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as an expense of the Association, provided, however, that deductibles and/or expenses paid or incurred by the Association as a result of the negligent or intentional act of any Owner, his agents, guests, invitees or family members, shall be charged to and paid by the Owner and shall be enforceable as a Special Individual Assessment. All such premiums shall be paid by the Association in a timely manner so as to prevent any unintended lapse in or termination of coverage.

**Section 6.3 General Standards.** All insurance policies maintained by the Association under this **Article VI** shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*, provided that such insurance is available from a company with at least such a rating and that, in the event it is not so available, such insurance is obtained from a company with the highest rating available in *Best's Insurance Guide*. All

insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

**Section 6.4 Insurance Proceeds.** Subject to any requirements or limitations imposed by N.C.G.S. § 47F-3-113, the Association shall use the net proceeds of property and casualty insurance to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of property and casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area. If the insurance proceeds received by the association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment or Special Individual Assessment, as appropriate under the circumstances, to cover the deficiency.

**Section 6.5 Owner's Personal Property.** The Association shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, which is left, placed, or located on or used at the Common Area. Further, the Association shall not be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees which is left, placed or located on or used at the Common Area. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

**Section 6.6 No Obligation to Insure Owners' Property.** By virtue of taking title to a Lot within the Property, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of such Lot or any House or other property located thereon.

**Section 6.7 Security.** The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Property designed to make the Property safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then the Association shall not in any way be considered insurers or guarantors of security or fire protection within the Property, and the Association shall not be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot or House and each tenant, guest and invitee thereof acknowledges and understands that the Association is not an insurer, and each such Owner, and Occupant of a Lot or House and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property, or contents belonging to any such persons.

## ARTICLE VII

### MAINTENANCE OF PROPERTY

**Section 7.1 Maintenance by Association.** The Association shall be responsible for the operation, maintenance and repair of the Common Area, as provided in **Section 2.3**. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees, guests or family members, which shall be the responsibility of and may be charged to that Owner as a Special Individual Assessment.

**Section 7.2 Maintenance by Owners.** The Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including House and improvements thereon and ground and drainage easements or other rights-of-way incident thereto, (1) in compliance with the applicable covenants, conditions, restrictions and standards contained in the Governing Documents, (2) in accordance with the provisions of the Architectural and Landscape Guidelines, and (3) in a well-maintained, safe, clean and attractive condition at all times. The provisions of this section shall not affect the duty of the Owner to obtain approvals as provided in **Article VIII** for Improvements as defined therein. For purposes of this section, "Lot" shall include all easements granted to or reserved for the Association during any period that the Association is using them or exercising their rights in or over them.

Maintenance of unimproved and improved Lots (including the area between any Lot line and the paved or improved portion of any Roadway or public right of way), shall include, but shall not be limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (c) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (d) Complying with all governmental zoning, construction, sedimentation control, health and police requirements.

In addition, maintenance of improved Lots shall include, but shall not be limited to, the following:

- (a) Lawn mowing on a regular basis;
- (b) Tree and shrub pruning;
- (c) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (d) Keeping exterior lighting and mechanical facilities in working order;
- (e) Keeping vegetation in lawn and garden areas alive;
- (f) Removing and replacing any dead plant material;
- (g) Maintenance of natural areas and landscaping in accordance with the Architectural and Landscape Guidelines;
- (h) Keeping parking areas and driveways in good repair;
- (i) Repainting of Improvements; and

- (j) Repair of damage and deterioration to Improvements (as defined in **Section 8.4**). If any Improvements are damaged or destroyed by fire or other casualty, the Owner of the Lot on which such Improvements are situated must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Review Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Supplemental Declaration applicable thereto) or remove such damaged improvements and restore the Lot to its condition existing prior to the construction of such House or Improvements within six (6) months following the date such damage or destruction occurs.

If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board, shall give such Owner written notice of such failure and such Owner must perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described herein within fifteen (15) days after the date of the notice. Notice shall be deemed to have been given upon deposit in an official depository of the United States mail, with first class postage prepaid and addressed to the Owner.

Should any such Owner fail to fulfill this duty and responsibility within the period specified, then the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association in performing such work computed at the highest rate permitted by law from the date(s) such amounts are expended until repayment to the Association, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder. The Owner shall reimburse the Association on demand for such costs and expenses, including interest as above provided. If such Owner shall fail to reimburse the Association within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association, the Association may impose and enforce a Special Individual Assessment against such Owner as provided in **Section 4.5**.

## ARTICLE VIII

### ARCHITECTURAL AND LANDSCAPING CONTROL

**THE POWERS AND CONTROL SET FORTH IN THIS ARTICLE ARE EXTENSIVE. THEY ARE INTENDED TO PROVIDE THE MAXIMUM POSSIBLE JURISDICTION AND AUTHORITY OVER ARCHITECTURAL AND LANDSCAPING THAT MAY BE DESIRED. IF LESSER OVERSIGHT OR CONTROL IS DESIRED, SECTIONS MAY BE MODIFIED TO REDUCE THE JURISDICTION OF THE ACC OR TO REMOVE CERTAIN RESPONSIBILITIES OTHERWISE IMPOSED ON MEMBERS IN CONNECTION WITH THE ARCHITECTURAL AND LANDSCAPING PROCESS, E.G., FEES FOR PROFESSIONAL SERVICES, ETC.**

**Section 8.1 General.** Notwithstanding anything contained in this Declaration to the contrary, no Improvements (see **Section 8.4**), including, without limitation, site preparation on any Lot, change in grade, drainage, or slope of any Lot, or erection, alteration or addition of or to any building situated upon the Property, erection of, or changes or additions of or to fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property until: (a) the Architectural Review Committee, appointed as hereinafter provided, has received and reviewed the plans and specifications therefor and the location, materials, size and design of such Improvements and has given its **written approval** for commencement of construction, all in accordance with the terms and requirements in the Architectural and Landscape Guidelines; (b) the fees set forth or contemplated in this **Article VIII** have been paid; and (c) the contracts identified in this **Article VIII** have been executed.

**Approval of an Improvement may be conditioned upon commencement and/or completion within the specified periods or by specified dates. If no specific period is specified, every Improvement must be commenced within six (6) months of the date approved or a new written approval must be requested and obtained as provided herein.**

**Section 8.2 Composition of Architectural Review Committee.**

a. **Appointment of Committee Members.** The members of the Architectural Review Committee may be appointed by the Board. Pending appointment of members by the Board, the Board shall act as the Architectural Review Committee. The Architectural Review Committee will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Review Committee to be designated from time to time by the Board.

b. **Removal and Replacement of Committee Members** The members of the Architectural Review Committee need not be Owners. In the event of the death or resignation of any member of the Architectural Review Committee, the party or body then having the authority to appoint members to the Architectural Review Committee shall have full authority to designate and appoint a successor. Members of the Architectural Review Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members.

c. **Professional Services.** Professional fees for services rendered may be taxed to the Owner submitting a request and if unpaid shall become a Special Individual Assessment enforceable as provided in **Section 4.5**. Notwithstanding anything contained herein to the contrary, the Architectural Review Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Review Committee as described in this **Article VIII**.

**Section 8.3 Architectural and Landscape Guidelines.**

a. The Architectural Review Committee may, from time to time, publish and promulgate architectural and design guidelines (the "Architectural Guidelines"). The Architectural Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended to be a guide to assist owners in preparing and submitting applications, plans, specifications, and

supporting information for proposed Improvements and as a reference to the Architectural Review Committee in reviewing applications, plans, specifications, and supporting information for proposed Improvements, excluding only landscape Improvements, which are addressed in **Section 8.3(b)**. The Architectural Guidelines may set out, among other things, the procedures for submission, review and approval of plans and specifications for the construction of non-landscape Improvements to the Architectural Review Committee. The Architectural Review Committee is authorized to request the submission of samples of proposed construction materials. To the extent standards, requirements, methods, and procedures are established in the Architectural Guidelines, they shall be binding upon and complied with by all Owners and their contractors and sub-contractors and shall be assumed to be incorporated into any written approval issued pursuant to the provisions of **Section 8.1** unless expressly varied in writing by the Architectural Review Committee. **In any event, the Architectural Guidelines shall not be binding upon the Architectural Review Committee, may be revised and amended at any time by the Architectural Review Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials for the construction for non-landscape Improvements submitted to the Architectural Review Committee for approval.**

b. The Architectural Review Committee may, from time to time, publish and promulgate landscape guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscaping of the Property and are intended as a guide to assist owners in preparing and submitting applications, plans, specifications, and supporting information for proposed Improvements and as a reference to assist the Architectural Review Committee in reviewing applications, plans, specifications, and supporting information for proposed Improvements. The Landscape Guidelines may set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the Architectural Review Committee and the fees to be imposed by Architectural Review Committee, as more specifically described in **Section 8.8**. In addition, the Landscape Guidelines may establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including removal of trees. To the extent standards, requirements, methods, and procedures are established in the Landscape Guidelines, they shall be binding upon and complied with by all Owners and their contractors and sub-contractors and shall be assumed to be incorporated into any written approval issued pursuant to the provisions of **Section 8.1** unless expressly varied in writing by the Architectural Review Committee. **In any event, the Landscape Guidelines shall not be binding upon the Architectural Review Committee, may be revised and amended at any time by the Architectural Review Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of landscaping plans, specifications and other materials submitted to the Architectural Review Committee for approval.**

c. The Architectural Review Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction and/or installation rules to be followed by all Owners, contractors and installers performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

d. The Architectural Guidelines, the Landscape Guidelines and the construction and installation rules shall herein collectively be referred to as the "Architectural and Landscape Guidelines". The Architectural Review Committee may issue and amend the Architectural and Landscape Guidelines



from time to time and may publish and promulgate different Architectural and Landscape Guidelines for different sections or portions of the Property.

**Section 8.4 Definition of "Improvements"**. The term "Improvement" or "Improvements" shall mean and include the House and any and all man-made changes or additions to a Lot or attached or affixed to a Lot, including, but not limited to, all structures and buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, etc.); storage sheds or areas; roofed structures; parking or paved areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings, poles; driveways; ponds; lakes, changes in grade or slope; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs, flags, banners, and the poles and structures from which they are hung or flown; exterior lights and illumination; and changes in any exterior color, design or shape. Antennae and satellite dishes are subject to regulation and restriction to the fullest extent permitted under the Telecommunications Act of 1996, as amended. The definition of Improvements includes both original Improvements and all later changes or additions to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Review Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Review Committee.

**Section 8.5 Enforcement.**

(a) The architectural control provisions of this Declaration and any Supplemental Declarations are to facilitate control of the architectural design, construction, installation and placement of all Improvements and landscaping; to establish quality standards for construction, installation and related activity in the Property; and to help preserve values of properties in the Property. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Property, and to the values of their respective properties in the Property, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this **Article VIII** and to enforce rulings and decisions of the Architectural Review Committee by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provision, ruling or decision and/or through administrative action as permitted by the Act, including the possible imposition of fines or suspension of rights or privileges. The Architectural Review Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Review Committee or the Board whether there exists any Improvement which is not approved or which violates the terms of any approval by the Architectural Review Committee, the terms of the Architectural and Landscape Guidelines, the terms of this Declaration or the Governing Documents.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Lot and/or Improvements to the condition existing prior to the construction or installation thereof (including, without limitation, the demolition and removal of any unapproved

Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to any dispute resolution process including, without limitation, those detailed in **Section 13.2**, to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of this Article, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the association and/or the Architectural Review Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

**Section 8.6 Failure of the Architectural Review Committee to Act.** **WRITTEN APPROVAL AS SPECIFIED IN SECTION 8.1 SHALL BE REQUIRED IN EVERY CASE.** No failure or delay by the Architectural Review Committee to approve or disapprove any plans and specifications and other submittals or to reject them as being inadequate or unacceptable shall be deemed as construed to be an acceptance or approval thereof. No verbal or oral statement or representation by any person shall bind the Board, the Association, or the Architectural Review Committee. Further, the Architectural Review Committee has no right or power to waive or grant any variances relating to any mandatory use restrictions or requirements specified in this Declaration or any Supplemental Declaration, or to waive any of the requirements set forth in **Section 8.8**. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Review Committee may take no action with respect to them or may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject or approve the balance.

**Section 8.7 Variances.** Subject to the limitations set forth in the preceding section and upon submission of a written request, the Architectural Review Committee may, from time to time and in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with architectural or landscaping requirements or provisions that might be otherwise applicable. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of standards, restrictions and requirements herein set forth. **A written request for a variance shall be deemed to be disapproved until the Architectural Review Committee has expressly approved the request in writing.** No member of the Architectural Review Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from all other such requests. The grant of a variance to any Owner shall not constitute a waiver of the Architectural Review Committee's right to strictly enforce the covenants, restrictions and standards against any other Owner. **Nothing herein shall authorize the Committee to grant a variance with respect to the Use Restrictions set forth in Article X or any Supplemental Declaration.**

**Section 8.8 Fees Required by the Architectural Review Committee.** The Architectural Review Committee, in its sole discretion, may require that each person submitting plans and specifications for Improvements to the Architectural Review Committee pay one or more fees to the Architectural Review Committee or to Declarant as a condition to review and/or to the commencement of construction

